

1
2
3
4
5
6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 KING COUNTY, a Washington municipal
11 corporation,

12 Plaintiff,

13 v.

14 ALEX M. AZAR II, in his official capacity as
15 SECRETARY, U.S. DEPARTMENT OF
16 HEALTH AND HUMAN SERVICES; and
17 the U.S. DEPARTMENT OF HEALTH AND
18 HUMAN SERVICES,

19 Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

20 **I. INTRODUCTION**

21 This is an action pursuant to the Administrative Procedure Act (“APA”) challenging the
22 U.S. Department of Health and Human Service’s (“HHS”) unlawful, premature termination of a
23 five-year teen pregnancy prevention program grant award to Plaintiff King County (“King
24 County” or the “County”) three years into the program.

25 Established in 2010, Congress created the Teen Pregnancy Prevention (“TPP”) Program
26 to bring a rigorous, evidence-based focus to developing, studying, and replicating effective teen
27

1 pregnancy prevention and adolescent health programs. Lauded by medical groups and HHS
2 itself as contributing to sharp declines in teen pregnancy over the past six years, and hailed as a
3 “poster-child” for science-based policy, the TPP Program has been an unqualified success.

4 In July 2015, HHS awarded King County a five-year grant for a long-term study of its
5 High School Family Life and Sexual Health—or FLASH—curriculum, a medically accurate,
6 science-based sexual education program used widely throughout the County and elsewhere in the
7 United States. King County enlisted as study participants school districts in Minnesota and
8 Georgia with higher than average teen pregnancy rates.

9
10 In July 2017, however, following the appointment of opponents of evidence-based
11 programs, HHS abruptly informed all 81 TPP Program grantees (including King County) that it
12 was terminating the Program two years early. While no reason for this decision has been
13 provided to the grantees, HHS officials have publicly offered shifting *post hoc* explanations,
14 ranging from the unsupported claim that the grantee programs are ineffective to asserting that the
15 Congressionally-mandated TPP Program is not in line with the President’s proposed budget.
16 Even if they could be credited, none of these explanations provides a basis for termination under
17 HHS’s own regulations. And, none of them permits HHS to thwart Congress’s clear mandate.

18
19 During the first two years of the grant, including just a few weeks before HHS sent notice
20 of termination, HHS consistently praised the County for the quality of its study and program.
21 HHS’s about-face has stopped the study in its tracks, rendering useless three years of data and \$3
22 million in federal funds spent; cut off several participating school districts before they have
23 incorporated the High School FLASH curriculum into their health classes; and deprived high-
24 risk students of quality pregnancy prevention education.
25
26
27

1 HHS's actions were arbitrary, capricious, and contrary to law, and they have harmed and
 2 continue to harm King County and the students it serves through the TPP Program. Accordingly,
 3 HHS's actions should be set aside and HHS should be required to solicit and process King
 4 County's application for continued funding.

5 **II. JURISDICTION AND VENUE**

6
 7 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because
 8 the claims arise out of the laws of the United States.

9 2. Venue is proper under 28 U.S.C. § 1391(e). Defendants are an agency of the
 10 United States and an official of the agency sued in his official capacity and Plaintiff King County
 11 resides in this judicial district.

12 **III. PARTIES**

13
 14 3. Plaintiff King County, located in Washington State, operates one of the largest
 15 metropolitan health departments in the United States, serving a population of 2.1 million.
 16 Through its Public Health Department, King County works to protect and improve the health and
 17 well-being of all residents as measured by increasing the number of healthy years that people
 18 live and eliminating health disparities. As relevant to this action, in July 2015, King County
 19 received a five-year grant from HHS to conduct the first scientifically rigorous study of High
 20 School FLASH's effectiveness on sexual and reproductive health behaviors. That grant was
 21 unlawfully terminated two years early by Defendant HHS.
 22

23 4. Defendant Alex M. Azar II is the Secretary of HHS, a federal agency
 24 headquartered in Washington, D.C. He is sued in his official capacity.
 25
 26
 27

5. Defendant HHS is a federal agency headquartered in Washington, D.C. HHS administers the Teen Pregnancy Prevention Program, including King County's grant under the Program, which is the subject of this action.

IV. BACKGROUND

The Health Risks of Teen Pregnancy to Mother and Child

6. Approximately one in four teenaged women in the United States will become pregnant before the age of 20.¹ While the rate of teen pregnancy in the United States has declined in recent decades, it remains higher than that of other industrialized countries.²

7. The vast majority of teen pregnancies are unplanned—that is, pregnancies in which the mother has said that she did not intend or want to become pregnant.³

8. Teen pregnancy is linked to a variety of major social concerns, such as poverty and poor outcomes for child well-being, health, and education.⁴

9. For example, only 38% of women who bear children during their teen years receive a high school diploma;⁵ teen mothers are more likely to live in poverty and rely on government assistance than mothers who delay childbearing until past their teen years;⁶ and children born into poverty are at greater risk for health issues and delays in educational advancement.⁷

¹ Power to Decide [formerly The National Campaign to Prevent Teen & Unplanned Pregnancy], *Fast Facts: Teen Pregnancy in the United States* (Apr. 2016), <https://powertodecide.org/what-we-do/information/resource-library/fast-facts-teen-pregnancy-united-states> (citing data from the Centers for Disease Control).

² Guttmacher Institute, *Teen Pregnancy Rates Declined in Many Countries Between the Mid-1990s and 2011; United States Lags Behind Many Other Developed Nations* (Jan. 23, 2015), <https://www.guttmacher.org/news-release/2015/teen-pregnancy-rates-declined-many-countries-between-mid-1990s-and-2011>.

³ Power to Decide, *Why It Matters*, <https://powertodecide.org/what-we-do/information/why-it-matters>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ National Campaign to Prevent Teen and Unplanned Pregnancy, *Why It Matters: Teen Childbearing, Education, and Economic Wellbeing* (July 2012),

10. Teen mothers are also nearly twice as likely to forgo critical prenatal care in the first trimester of their pregnancies, which creates medical risks to child well-being.⁸ Teens have a higher risk of developing certain health problems during pregnancy (such as high blood pressure or anemia) than older women.⁹ Pregnant teens are also more likely than adult women to experience preterm birth. The risks are even higher for teenage women who are younger than 15 years old and for those who do not receive prenatal care at all.¹⁰

11. These issues are especially pronounced in rural areas where the birth rate of teenagers is almost 33% higher than in the rest of the country due to lack of access to health clinics, contraception, and counseling resources.¹¹

Federal Support for Evidence-Based Teen Pregnancy Prevention Initiatives and the Creation of the Teen Pregnancy Prevention Program

12. Until 2010, most federal funding for teen pregnancy prevention initiatives was distributed without regard to whether the funded initiatives had been proven to be effective. Before then, little funding supported research on the efficacy of teen pregnancy prevention programs. And the evidence that did exist failed to show that programs receiving funding were delivering on their promises to reduce teen pregnancy, delay sexual intercourse, or prevent other sexually risky behaviors.¹²

<https://web.archive.org/web/20140713081524/https://thenationalcampaign.org/sites/default/files/resource-primary-download/childbearing-education-economicwellbeing.pdf>.

⁸ National Campaign to Prevent Teen and Unplanned Pregnancy, *Why It Matters: Teen Childbearing and Infant Health* (Oct. 2012),

<https://web.archive.org/web/20140803141657/https://thenationalcampaign.org/sites/default/files/resource-primary-download/childbearing-infant-health.pdf>.

⁹ The American College of Obstetricians & Gynecologists, *Having a Baby (Especially for Teens) Frequently Asked Questions for Teens* (Apr. 2015), <https://www.acog.org/Patients/FAQs/Having-a-Baby-Especially-for-Teens>.

¹⁰ *Id.*

¹¹ Laura Santhanam, *Why Is the Teen Birth Rate So Much Higher in Rural Areas?*, PBS News Hour (Nov. 16, 2016, 10:28 AM), <https://www.pbs.org/newshour/health/teen-birth-rate-higher-rural-areas>.

¹² Sexuality Information and Education Council of the United States, *A Brief History of Federal Funding for Sex Education and Related Programs*, <http://www.siecus.org/index.cfm?fuseaction=page.viewPage&pageID=1341&nodeID=1>.

1 13. The lack of funding for evidence-based teen pregnancy prevention programs led
2 the medical, public health, and scientific communities to call for federal funding for evidence-
3 based interventions as well as new and innovative approaches to address teen pregnancy.

4 14. To address that gap in funding, Congress established the TPP Program “to fund
5 medically accurate and age appropriate programs that reduce teen pregnancy.”¹³
6

7 15. The TPP Program is administered by HHS through the Office of Adolescent
8 Health (“OAH”) and overseen by the Office of the Assistant Secretary of Health.

9 16. Heralded as a “poster child” for evidence-based policy,¹⁴ the TPP Program is
10 designed to fund teen pregnancy prevention programs that have been proven by rigorous
11 evaluation of their results to be effective at the community level, to test such programs with new
12 populations and adapt them as required, and to develop and test new and innovative approaches
13 using modern day technologies. The program also seeks to evaluate the effectiveness of teen
14 pregnancy prevention programs across the United States, and to expand those that are achieving
15 results.
16

17 17. The TPP Program focuses on proven results rather than pre-determined or
18 ideological preferences. It promotes curricula and other interventions that are scientifically
19 proven to be effective and provides funds to study and evaluate new interventions in order to
20 build a body of resources for evidence-based policy. While some progressive advocates
21 preferred the federal government to simply fund comprehensive sex education and contraception,
22 and conservative advocates preferred an abstinence-only approach, the TPP Program’s approach
23 was unique: instead of advancing a particular political ideology, it posited that reliance on
24

25 ¹³ Consolidated Appropriations Act, Pub. L. No. 111-117, 123 Stat. 3034, 3253 (2010), <https://www.gpo.gov/fdsys/pkg/PLAW-111publ117/html/PLAW-111publ117.htm>.

26 ¹⁴ Valerie Strauss, *Trump Administration Cuts Funding for Teen Pregnancy Prevention Programs*, Wash. Post
27 (Sept. 7, 2017), https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/?utm_term=.cf94ab0a8063.

1 science and data would ultimately better address social needs and be a more effective use of
2 government resources.¹⁵

3 18. Many of the programs embraced by OAH and funded through the TPP Program
4 include abstinence as part of a more comprehensive approach to sexual health and education. A
5 few of the TPP Program grants specifically emphasize abstinence because the particular
6 characteristics of those projects met the rigorous standards for funding. Through funding
7 evidence-based approaches and studies based in scientific principles, the TPP Program has been
8 described as providing “a library of proven choices from which communities can decide which
9 best meets their needs.”¹⁶ Put simply, the TPP Program funds interventions that are shown to
10 effectively address teen pregnancy and/or that study new science-based methods, as opposed to
11 funding programs based on political ideology.
12

13 19. Since the TPP Program’s creation in 2010, teen pregnancy rates have declined at
14 an increasing rate and many—including OAH itself—have cited the TPP Program as
15 contributing to this trend.
16

17 20. In creating the TPP Program, Congress appropriated over \$100 million and
18 directed HHS to fund programs and studies as follows:

19 \$110,000,000 shall be for making competitive contracts and grants to public and
20 private entities to fund medically accurate and age appropriate programs that
21 reduce teen pregnancy and for the Federal costs associated with administering and
22 evaluating such contracts and grants, of which not less than \$75,000,000 shall be
23 for replicating programs that have been proven effective through rigorous
24 evaluation to reduce teenage pregnancy, behavioral risk factors underlying
25 teenage pregnancy, or other associated risk factors, of which not less than

26 ¹⁵ Charles Homer, *Teenage Pregnancy Prevention Is The Latest Front In The War On Science*, HealthAffairs:
27 Health Affairs Blog (Aug. 18, 2017, 10:13 AM),
<https://www.healthaffairs.org/doi/10.1377/hblog20170818.061589/full/>.

¹⁶ Valerie Strauss, *Trump Administration Cuts Funding for Teen Pregnancy Prevention Programs. Here are the Serious Consequences*, Wash.Post (Sept. 7, 2017), https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/?utm_term=.cf94ab0a8063.

\$25,000,000 shall be available for research and demonstration grants to develop, replicate, refine, and test additional models and innovative strategies for preventing teenage pregnancy, and of which any remaining amounts shall be available for training and technical assistance, evaluation, outreach, and additional program support activities: Provided further, That of the amounts provided under this heading from amounts available under section 241 of the PHS Act, \$4,455,000 shall be available to carry out evaluations (including longitudinal evaluations) of teenage pregnancy prevention approaches.¹⁷

21. In April 2010, OAH issued two Funding Opportunity Announcements (“FOAs”) related to the TPP Program. One FOA sought applications for Tier 1 grant projects, which are designed to replicate program models that demonstrate positive impacts on key sexual behavioral outcomes, including reduction of teen pregnancy and delay of sexual activity. The other FOA sought applications for Tier 2 grant projects, which are designed to develop and rigorously test new and innovative approaches to prevent teen pregnancy.¹⁸

22. The FOAs for both Tier 1 and Tier 2 grant projects specified that the projects would be funded for a five-year grant period.¹⁹ The FOAs instructed applicants to, among other things, “provide a detailed five-year work plan and a timetable for the first year of the project” and to “create a logic model that provides an overview of the entire program for the five years of the cooperative agreement.”²⁰

23. Between FY 2010 and FY 2014, OAH funded 102 grantees through competitively awarded grants as part of the TPP Program. The grantees’ projects reached more than half a

¹⁷ Consolidated Appropriations Act, Pub. L. No. 111-117, 123 Stat. 3034, 3253 (2010).

¹⁸ Teenage Pregnancy Prevention (TPP): Research and Demonstration Programs and Personal Responsibility Education Program (PREP); Funding Opportunity Announcement and Application Instructions, http://wayback.archive-it.org/3909/20140324182153/http://www.hhs.gov/ash/oah/grants/assets/foa_tpp_tier_2.pdf [hereinafter “April 2010 Tier 2 FOA”]; Evelyn M. Kappeler and Amy Feldman Farb, *Historical Context for the Creation of the Office of Adolescent Health and the Teen Pregnancy Prevention Program*, J. Adolescent Health, 54, S3-S9 (2014).

¹⁹ Teenage Pregnancy Prevention (TPP): Research and Demonstration Programs and Personal Responsibility Education Program (PREP); Funding Opportunity Announcement and Application Instructions, http://wayback.archive-it.org/3909/20140324182152/http://www.hhs.gov/ash/oah/grants/assets/funding_announcement_04012010.pdf [hereinafter “April 2010 Tier 1 FOA”]; April 2010 Tier 2 FOA.

²⁰ *Id.*

1 million young people in 39 states and the District of Columbia. The grantees also trained a
 2 combined 6,100 facilitators, created 3,800 community partnerships, and funded over 40 rigorous
 3 evaluation studies to identify the factors that contribute to the effectiveness of specific
 4 programs.²¹

5 ***OAH Awards Additional Five-Year Pregnancy Prevention Program Grants, Including a Grant***
 6 ***to Plaintiff King County***

7 24. Since the first group of TPP Program grants was competitively awarded, Congress
 8 has continued to appropriate funds for the TPP Program through formal appropriations bills and
 9 continuing budget resolutions.

10 25. To both extend the reach of existing evidence-based teen pregnancy prevention
 11 approaches to at-risk populations and to develop new interventions, OAH issued new FOAs in
 12 January 2015 requesting applications for a second cohort of competitive, five-year grants
 13 (collectively, the “2015 FOAs”). The 2015 FOAs announced various types of available awards,
 14 including for programs that provide capacity-building assistance to replicate evidence-based TPP
 15 Programs in defined service areas with demonstrated needs (known as Tier 1A grants), and for
 16 programs to replicate evidence-based TPP Programs to scale in communities with the greatest
 17 need (known as Tier 1B grants).

18 26. As relevant to King County, the 2015 FOAs also announced awards for programs
 19 intended to “increase the number of evidence-based TPP interventions available by rigorously
 20 evaluating new or innovative approaches for preventing teen pregnancy and related risk
 21 behaviors.”²² Per the Tier 2B FOA, these Tier 2B grants were “designed to address gaps in the
 22 existing evidence and reduce adolescent sexual and reproductive health disparities,” particularly
 23

24 ²¹ Office of Adolescent Health, HHS, *Results from the OAH Teen Pregnancy Prevention Program*,
 25 <https://www.hhs.gov/ash/oah/sites/default/files/tpp-cohort-1/tpp-results-factsheet.pdf>.

26 ²² Office of Adolescent Health, *Rigorous Evaluation of New or Innovative Approaches to Prevent Teen Pregnancy*
 27 (Tier 2B) <https://www.hhs.gov/ash/oah/sites/default/files/tier2b-foafile.pdf> [hereinafter “Tier 2B FOA”].

1 in populations, such as LGBT youth and rural youth, that are “at disproportionate risk for teen
2 pregnancy” and “where limited evidence-based TPP Programs [are] currently available.”²³

3 27. For purposes of these awards, OAH defined “innovation broadly as new or
4 promising approaches, strategies, interventions, or curricula, informed by scientific theory or
5 empirical evidence that may lead to or have the potential to result in a substantial reduction in
6 teen pregnancy rates, sexually transmitted infection (STIs) rates, and associated sexual risk
7 behaviors,” including curricula that “had been in use for some years but ha[d] never been
8 rigorously evaluated.”

10 28. The Tier 2B FOA announced that OAH would fund approximately \$18 million
11 for Tier 2B grants.

12 29. Due to the “substantial programmatic involvement . . . anticipated between OAH
13 and the grantee during performance of the project,” the Tier 2B FOA specified that the grants
14 would be funded “in the form of a five-year cooperative agreement with the grantee” under
15 which OAH, among other things, would review all implementation and evaluation plans as well
16 as “all program materials prior to use in the project to ensure the materials are medically accurate
17 and complete.”²⁴

19 30. The Tier 2B FOA established five-year “project period[s]” and one-year “budget
20 periods” for the grants, meaning that for each of the five grant years, the recipient would be
21 required to submit a “[n]on-competing [c]ontinuation [a]pplication,” consisting of a “progress
22 report for the current budget year, and work plan, budget and budget justification for the
23 upcoming year.” The Tier 2B FOA further stated that funding for these subsequent years would
24

26 ²³ *Id.*

27 ²⁴ Tier 2B FOA.

1 be “generally level with the initial award amount and . . . contingent upon the availability of
2 funds, satisfactory progress of the project, and adequate stewardship of Federal funds.”²⁵

3 31. Grounds for termination of any grant awarded under the Tier 2B FOA were
4 limited to a grantee’s failure to (1) “meet major milestones as required/defined by OAH”; (2)
5 “receive OAH approval for their evaluation plan by the end of year one”; (3) “complete planning
6 year milestones and receive OAH approval to begin implementation and evaluation of the
7 intervention no later than 12 months after receipt of funding”; or (4) “collect and report on the
8 full set of performance measures at any time during the grant cycle.”²⁶

10 32. The Tier 2B FOA set forth detailed evaluation and review criteria for grant
11 applicants. The proposals were to be scored by an independent panel consisting of experts in
12 teen pregnancy prevention drawn from academic institutions, non-profit organizations, state and
13 local government, and other federal agencies.

15 ***King County’s FLASH Curriculum and 2015 FOA Application***

16 33. Over 30 years ago, King County developed a medically accurate sexual health
17 education curriculum, known as Family Life and Sexual Health, that has been periodically
18 updated to maintain medical and scientific accuracy. In 2015, High School FLASH was again
19 updated to align with health standards published by the Centers for Disease Control and
20 Prevention. The goals of the 15-lesson, science-based High School FLASH curriculum are to
21 prevent teen pregnancy, sexually transmitted diseases (“STDs”), and sexual violence, especially
22 in vulnerable populations such as LBGT youth, teens in foster care, and youth who have
23 experienced trauma. In addition to high school, the FLASH curriculum is available with age-
24 appropriate material for elementary, middle school, and special education classrooms.

25 ²⁵ *Id.*

26 ²⁶ *Id.*

1 34. High School FLASH prepares students to abstain from sex, use condoms and
2 birth control when they do have sex, confirm consent before engaging in sexual activity,
3 communicate with their families about sexual health, make decisions that minimize risk to their
4 sexual health, and seek medical attention in order to take care of their reproductive health. High
5 School FLASH includes a variety of strategies designed to build skills in order to reduce rates of
6 pregnancy, STDs, and sexual violence. High School FLASH includes a strong family-
7 involvement component in order to increase protective factors that support students in remaining
8 abstinent, using birth control and condoms, and respecting others' decisions not to have sex.
9 High School FLASH supports and respects diverse community values through its inclusive
10 design, its use of the values questions protocol, and family homework, which encourages
11 discussion about values between parent or guardian and child.
12

13 35. FLASH is presently taught in every school district in King County; collectively,
14 those communities have seen a 63% reduction in teen pregnancy rate since 2008. FLASH has
15 also received national acclaim and is used in 44 states.
16

17 36. In its TPP Program grant application, King County proposed to recruit and
18 randomize schools located in two regions outside of Washington State with higher-than-average
19 teen pregnancy rates, provide baseline surveys of these students' sexual health, and then provide
20 students with either the High School FLASH curriculum (taught by local health educators) or a
21 standard control curriculum (taught by their regular health teacher). Following administration of
22 the curricula, King County proposed to survey students at three- and 12-month intervals in order
23 to assess the long-term impact of High School FLASH on, among other things, initiation of
24 sexual intercourse, use of contraceptives, STD testing, and family communication regarding
25 sexual health. For agreeing to participate, each of the schools would receive the High School
26
27

FLASH curriculum for each of their teachers; in-person teacher training by King County health education specialists; and an annual stipend of \$2,600. Each participating student was to receive a modest incentive such as a gift card to participate.

37. In response to the 2015 FOA, King County submitted a Tier 2B grant proposal to conduct a five-year randomized control trial to test the efficacy of High School FLASH in what was to be the first-ever scientifically rigorous evaluation of the program.

38. On July 1, 2015, OAH awarded King County a five-year, \$5 million grant, with \$1 million to be awarded annually. Reviewers of King County's application proposal found that it used "strategies . . . informed by science theory and empirical evidence"; "demonstrate[d] a very high level, impressive, relevant and accurate perspective on 'best practice' approaches to public health planning for achieving equitable [sexual reproductive health] for all youth"; and "fill[ed] a significant gap in rigorous research and evaluation and address[ed] disparities in adolescent [sexual reproductive health] by focusing on youth in high schools in a diverse, inclusive, and equitable manner."²⁷

39. On July 6, 2015, King County received a letter of congratulations from OAH Director Evelyn Kappeler, stating that the office was looking "forward to working with you over the next five years to support your project and ensure your continued success."²⁸ Ms. Kappeler also stated that the five-year grants awarded by OAH for all TPP Programs would serve 290,000 youth annually and 1.2 million youth in 38 states and the Marshall Islands.

40. The Notice of Award and Cooperative Agreement received by King County along with Ms. Kappeler's letter established a five-year project period for the \$5 million award spanning from July 1, 2015 to June 30, 2020. King County's Award fully funded its grant for

²⁷ *Id.*

²⁸ Letter from OAH Director Evelyn Kappeler to King County (July 6, 2015).

1 the first year of the five-year program and indicated the exact amount of funding for each
 2 subsequent grant year, noting only that this “recommended future support” was “[s]ubject to the
 3 availability of funds and satisfactory progress of the project.”

4 41. In 2015, HHS convened a conference in Washington, D.C. for all the Tier 2B
 5 grantees at which it announced that Mathematica Policy Research would be providing technical
 6 assistance to the grantees on study design to ensure that grantees’ ultimate evaluations would
 7 meet rigorous evidence review standards.
 8

9 ***The Early Work and Success of King County’s TPP Program Evaluation Project***

10 42. Following receipt of its award from OAH, King County recruited 20 schools to
 11 participate in the FLASH study: 10 high schools in urban areas in Minnesota, and 10 high
 12 schools in rural and small metropolitan areas in Georgia. Each of the selected schools was in an
 13 area that lacked adequate sexual and reproductive health education and had higher than average
 14 teen birth rates, with students who often had significantly fewer financial and educational
 15 resources than their peers in other parts of the country.
 16

17 43. Six school boards in Minnesota and Georgia unanimously voted to adopt High
 18 School FLASH and participate in the study.

19 44. King County partnered with local agencies in Minnesota and Georgia to
 20 administer the study to more than 1600 students.
 21

22 45. King County has received numerous commendations in its reviews by OAH. For
 23 example, OAH praised King County for having “successfully completed all of [its] planning year
 24 milestones” in year one and, subsequently, for focusing on “key objectives and major activities
 25 both to implement FLASH with high quality and to evaluate FLASH rigorously.”
 26
 27

46. To the extent these reviews included minor recommendations for improvements moving forward, King County fully addressed them.

47. King County complied with all program requirements throughout the grant.

HHS's Abrupt Termination of the County's TPP Program Grant

48. In April 2016, the County submitted a non-competing continuation application for the second year of the grant.

49. In July 2016, OAH made a second award of \$1 million to King County.

50. On November 4, 2016, OAH awarded the County an additional \$360,948 in “carry over” funding—*i.e.*, funding not used in the prior fiscal year—in addition to the \$1 million to use in year two of the FLASH grant.

51. OAH continued to support the TPP Program grants during 2016 and the first half of 2017. On April 26, 2017, for example, in honor of Teen Pregnancy Prevention Month, HHS touted “TPP grantees work to reach young people in greatest need using evidence-based/innovative strategies.”

52. OAH also held numerous conferences and workshops during this period aimed at supporting the grants, and advised grantees about their projects.

53. OAH also praised King County's work under its grant. In July 2016, at OAH's invitation, the County presented at HHS's Teen Pregnancy Prevention Conference on the topic of “Strategies for Designing, Evaluating and Delivering LGBTQ-Inclusive Sexual Health Education to Improve Outcomes for All Youth.” And in a May 17, 2017 review, OAH recognized the County because its “workplan addresses all of the OAH expectations for Tier 2B grantees, including rigorous evaluation of the intervention, collection of performance measures,

1 packaging/dissemination of the intervention, health care linkages, and implementation of the
 2 intervention in safe and supportive, inclusive environments using a trauma-informed approach.”

3 54. During this time, preparations were well underway by OAH to fund the grants for
 4 year three in support of the full five-year projects. In April 2017, King County submitted a non-
 5 competing continuation application for the third year of the grant. King County frequently
 6 conferred with career staff at OAH regarding the trajectory of its study and received an assurance
 7 that its non-competing continuation application had been processed.
 8

9 55. Yet, OAH’s recently appointed political leadership had other plans, shifting the
 10 agency’s course dramatically.

11 56. On June 5, 2017, Valerie Huber was appointed to serve as Chief of Staff in the
 12 office of the Assistant Secretary of Health at HHS, the office that oversees OAH. Ms. Huber is a
 13 longtime opponent of the TPP Program which she now oversees, and her appointment followed
 14 the appointment of other opponents of evidence-based programs to key positions at HHS.
 15

16 57. Prior to serving at HHS, Ms. Huber was the president of Ascend, formerly known
 17 as the National Abstinence Education Association, an association that promotes abstinence-only-
 18 until-marriage (sometimes referred to as “sexual risk avoidance”) education. Researchers at
 19 Case Western Reserve University found the sexual education programs Ms. Huber ran when she
 20 served in state government in Ohio provided “false and misleading information,” perpetuated
 21 “destructive, inaccurate gender stereotypes,” and presented “religious convictions as scientific
 22 fact.” One curriculum said that teenagers who have sex before marriage should “be prepared to
 23 die.”²⁹
 24
 25
 26

27 ²⁹ Laura Lindberg, John Santelli & Sheila Desai, *Understanding the Decline in Adolescent Fertility in the United States, 2007-2012*, [http://www.jahonline.org/article/S1054-139X\(16\)30172-0/pdf](http://www.jahonline.org/article/S1054-139X(16)30172-0/pdf).

58. When interviewed regarding a study published in the widely-respected Journal of Adolescent Health that attributed the recent decline in teen pregnancy rates to increased access and use of contraception, Ms. Huber discounted the study as “biased” toward birth control.³⁰

59. Ms. Huber’s opposition to science-based teen pregnancy prevention programs—including specifically the TPP Program—has continued during her tenure at HHS.

HHS’s Abrupt Termination of the County’s TPP Program Grant

60. On July 6, 2017, less than two months after King County’s positive appraisal from OAH officials and within a few weeks of Ms. Huber joining OAH, the County received a Notice of Award for year three stating that “[t]his award also shortens the project period to end on June 30, 2018 at the end of this budget year.” The Award also advised of “closeout requirements” due to the fact that the grant was suddenly in its final “project period.”

61. At no time was King County provided any other explanation by the agency for the termination of its grant. Ms. Kappeler held an informal webinar for grantees shortly after the termination, but did not provide any particular explanation as to why the grants were ended.

62. Career employees at OAH previously working to support the grants expressed surprise that the grants were terminated.

63. According to news accounts, several grantees were told that the decision came from Ms. Huber’s office.

64. On August 3, 2017, the County appealed the grant termination to OAH and requested that OAH “reverse its decision and continue the grant period for the full five years.”³¹

65. Now half a year later, the County has still received no response to its appeal.

³⁰ Julie Royner Kaiser, *Drop in Pregnancies Is Due to More Contraceptives, Not Less Sex*, PBS Newshour (Sept. 2, 2016), <https://www.pbs.org/newshour/health/teen-pregnancies-contraceptives-less-sex>.

³¹ Letter from King County to Evelyn Kappeler, Director (Aug 3, 2017).

1 66. To date, HHS has not solicited non-competing continuing funding applications for
2 years four and five of the five-year grant.

3 67. In late September 2017, OAH notified grantees that they would no longer be
4 receiving technical and evaluation support from Mathematica.

5 68. HHS's abrupt decision to eliminate the County's grant funding was done outside
6 the traditional federal budget process and is directly contrary to the TPP Program's
7 appropriations statute. Congress has continued to fund the TPP Program through annual
8 appropriations that specifically mandate funds to be used for, among other things, "competitive
9 contracts and grants to public and private entities to fund medically accurate and age appropriate
10 programs that reduce teen pregnancy."
11

12 69. Congress has not yet passed an appropriation for FY 2018, but has continued to
13 fund the TPP Program through a series of continuing budget resolutions.
14

15 ***HHS's Shifting Public Explanations for Terminating TPP Program Grants***

16 70. HHS has not provided an explanation to King County for the termination of its
17 grant. When HHS has publicly addressed the grant terminations at large, it has given shifting
18 explanations, stating, for example, that there was "strong evidence of negative impact or no
19 impact" by the funded projects—a purported rationale that is contradicted by the agency's own
20 evidence and is particularly irrational as applied to Tier 2B grants, as the whole purpose of these
21 grants was to test the impact of innovative approaches.
22

23 71. Other agency officials, such as HHS spokeswoman Diane Gianelli, have claimed
24 that the cuts to the TPP Program are related to the President's FY 2018 Budget. In an email to
25 the *LA Times*, Ms. Gianelli stated "the President's FY 2018 Budget eliminated funding for the
26 Teen Pregnancy Prevention Program, so our grants office informed the grantees of their June 30,
27

1 2018 end date, to give them an opportunity to adjust their programs and plan for an orderly
 2 closeout.” Not only does this explanation differ from the other public explanations provided by
 3 the agency, but it also ignores that the President’s budget proposal is merely a *proposal* and has
 4 not been enacted by Congress. Congress continues to fund the TPP Program, notwithstanding
 5 the President’s request that it not do so.

6
 7 72. At the same time, OAH has continued to herald King County and the results of
 8 the TPP Program more generally. In an October 16, 2017 review, OAH wrote that King County
 9 “continues to do an outstanding job building, leveraging, and maintaining its partnerships in all
 10 study communities.” As recently as February 12, 2018, OAH staff commended King County for
 11 its work in rural areas under the grant and recommended that King County share its successful
 12 strategies with the field.

13
 14 73. In OAH’s Annual Report released in November 2017, the agency touted the
 15 program for having “more than tripled the number of youth served in 2017 compared to 2016,
 16 reaching 213,000 young people with evidence-based and evidence-informed teen pregnancy
 17 prevention programs” and as “a model of a Federal program developing increasingly rigorous
 18 portfolios of evidence.”

19
 20 74. Also in November 2017, HHS announced that it was directing approximately \$10
 21 million in funds for “new research and evaluation collaboration to support and improve teen
 22 pregnancy prevention and sexual risk avoidance programs” within HHS.³²

23
 24
 25
 26
 27 ³² Press Release, HHS, HHS Announces New Efforts to Improve Teen Pregnancy Prevention & Sexual Risk
 Avoidance Programs (Nov. 6, 2017), [https://www.hhs.gov/ash/oah/news/news-releases/new-sexual-risk-avoidance-
 programs/index.html](https://www.hhs.gov/ash/oah/news/news-releases/new-sexual-risk-avoidance-programs/index.html).

HHS's Abrupt and Unexplained Termination of the Grant Has Injured and Continues To Injure King County And the Communities Its Program Serves

75. OAH's decision to abruptly cut funding for the 81 TPP Program grantees jeopardizes the well-being of individuals throughout the United States, including more than one million women and children. It has been criticized by members of Congress, the medical community, and numerous community advocates. For example, in a letter to then-HHS Secretary Tom Price, 37 Senators stated that the action is "short-sighted and puts at risk the health and well-being of women and our most vulnerable youth who depend on the evidence-based work that TPP Program grantees are doing across the nation."³³ The letter further noted that "[t]he TPP Program is making a vital contribution to building a body of knowledge of what works to prevent teen pregnancy."³⁴ Additionally, the American College of Obstetricians and Gynecologists has called HHS's action "a step backward for ensuring healthy moms and healthy babies."³⁵ It has credited the TPP Program as contributing to the sharp declines in teen pregnancy rates over the past six years.³⁶

76. HHS's actions are irreparably harming the County and countless others. For King County, the loss of years four and five of grant funding will mean that after spending \$3 million in federal funds to study High School FLASH, King County will not complete the study. The County will not be able to analyze the data amassed in the Georgia and Minnesota schools to produce an assessment of High School FLASH that is scientifically valid and useful to the many schools, locally and nationally, that use the curriculum—the sole purpose for which King County

³³ Letter from Patty Murray et al., U.S. Senators, to Thomas E. Price, Sec'y of HHS (July 21, 2017), <https://www.help.senate.gov/imo/media/doc/071817%20Teen%20Pregnancy%20Program%20letter%20FINAL.pdf>.

³⁴ *Id.*

³⁵ Statement of Haywood L. Brown, President, American College of Obstetrics and Gynecologists, *Unintended Pregnancy Prevention is Essential to Women's Health* (July 17, 2017), <https://www.acog.org/About-ACOG/News-Room/Statements/2017/Unintended-Pregnancy-Prevention-is-Essential-to-Womens-Health>.

³⁶ *Id.*

1 was awarded the grant. Nor will the high schools in Minnesota and Georgia, which together
 2 serve more than 20,000 students, obtain the promised detailed survey results on the sexual health
 3 of their students. And due to the sequencing of the study, the schools in Georgia will not receive
 4 either the High School FLASH curriculum promised for each participating teacher (a \$2,000
 5 value) or the in-person training by County experts (an \$11,000 value), which would have enabled
 6 these districts to provide high-quality sexual health education going forward. The Georgia
 7 schools, moreover, which are chronically underfunded, will be deprived of \$26,000 in stipend
 8 monies; their students likewise will not receive approximately \$15,400 in incentive gift cards.

10 77. Due to HHS's actions, King County will imminently be forced to cut two staff
 11 positions and has had to divert critical resources used for other core programmatic activities
 12 (such as updating other grade levels of FLASH, refining teacher training for those grades, and
 13 reviewing and updating FLASH family homework assignments for younger grade levels to
 14 promote family communication) in a so far unsuccessful attempt to secure alternative funding to
 15 continue the FLASH study. To date, King County staff have spent over 200 hours seeking
 16 alternative funding, at a cost of over \$24,000 in public health resources.

18 **V. CLAIMS FOR RELIEF**

19 **Count One**

20 **(Administrative Procedure Act, 5 U.S.C. § 706(2))**

21 **Defendants' Termination of the County's Grant Violates the** 22 **Administrative Procedure Act**

23 78. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth
 24 herein.

79. The Administrative Procedure Act provides, among other things, that a court “shall . . . hold unlawful and set aside agency action . . . [that is] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

80. Defendants’ termination of Plaintiff’s grant constitutes final agency action, reviewable under the APA.

81. Defendants’ termination of Plaintiff’s grant is contrary to law.

82. The 2017 Consolidated Appropriations Act mandated:

That of the funds made available under this heading, \$101,000,000 shall be for making competitive contracts and grants to public and private entities to fund medically accurate and age appropriate programs that reduce teen pregnancy and for the Federal costs associated with administering and evaluating such contracts and grants, of which not more than 10 percent of the available funds shall be for training and technical assistance, evaluation, outreach, and additional program support activities, and of the remaining amount 75 percent shall be for replicating programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral risk factors underlying teenage pregnancy, or other associated risk factors, and 25 percent shall be available for research and demonstration grants to develop, replicate, refine, and test additional models and innovative strategies for preventing teenage pregnancy: *Provided further*, That of the amounts provided under this heading from amounts available under section 241 of the PHS Act, \$6,800,000 shall be available to carry out evaluations (including longitudinal evaluations) of teenage pregnancy prevention approaches.³⁷

83. This Appropriations Act, which remained in place through continuing budget resolutions, requires that HHS fund the TPP Program. In particular, the Continuing Appropriations Act, 2018, as well as subsequent acts extending it, Congress appropriated to HHS “[s]uch amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2017 and under the authority and conditions provided in such

³⁷ FY 2017 Consolidated Appropriations Act, Pub. L. No. 115-131, 131 Stat. 135, 536 (2017).

1 Acts, for continuing projects or activities . . . that were conducted in fiscal year 2017.”³⁸
 2 Congress mandated that such appropriations “shall be available to the extent and in the manner
 3 that would be provided by the [fiscal year 2017 appropriations acts].”³⁹ *Id.* §103. In terminating
 4 the County’s grant midway through the program, HHS has ignored this statutory mandate and
 5 has improperly impounded Congressionally appropriated funds. HHS is acting contrary to law in
 6 violation of the APA and Congressional mandates.
 7

8 84. HHS’s actions are also contrary to the Congressional Budget and Impoundment
 9 Control Act of 1974 (the “Impoundment Control Act”), which requires that the President make
 10 appropriated funds “available for obligation,” unless the President sends a special message to
 11 Congress detailing a request to rescind or reserve funds and Congress then passes a rescission
 12 bill rescinding the funding. 2 U.S.C. § 683(a). There has been no transmission of a special
 13 message to Congress by the President seeking to have TPP Program funding rescinded and
 14 Congress has not otherwise acted to rescind the funding. The President is thus required by the
 15 Impoundment Control Act to expend the appropriated TPP Program funding. Accordingly,
 16 Defendants’ termination of the TPP grants despite continued funding for the TPP Program
 17 constitutes final agency action contrary to the Impoundment Control Act in violation of the APA.
 18

19 85. HHS’s actions are also contrary to the agency’s own regulations. HHS’s
 20 regulations provide that a Federal award may be terminated in whole or in part only where the
 21 grantee has failed to comply with the terms and conditions of an award, for cause, with consent
 22 of the grantee, or by the grantee upon providing written notification of the reasons for such
 23 termination. *See* 45 C.F.R. § 75.372(a)(1)-(4). HHS has terminated the County’s grant without
 24

25
 26 ³⁸ Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act,
 27 2017, Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139-40; *see* Bipartisan Budget Act of 2018, Pub. L. No. 115-123
 (amending Continuing Appropriations Act, 2018, to extend appropriations through March 23, 2018).

³⁹ 131 Stat. 1129, 1139-40.

1 identifying any regulatory basis for the termination or following any of the specific procedures
2 required by governing regulations.

3 86. To date, HHS has failed to provide a reasoned or legally sufficient justification for
4 terminating Plaintiff's grant. Indeed, HHS has failed to provide any justification to King
5 County.

6 87. Thus, in terminating the grant award, Defendants acted arbitrarily, capriciously,
7 and contrary to law in the following ways, among others:

- 8
- 9 a. terminating Plaintiff's grant award and other TPP Program grant awards in the
 - 10 face of a Congressional mandate;
 - 11 b. terminating Plaintiff's grant award without grounds and otherwise failing to
 - 12 follow HHS grant termination procedures;
 - 13 c. failing to explain the basis of its decisions;
 - 14 d. providing shifting and unreasoned *post hoc* explanations for its decisions; and
 - 15 e. making decisions based on undue political interference by agency officials rather
 - 16 than merit.
- 17

18 **Count Two**
19 **(Administrative Procedure Act, 5 U.S.C. § 706(1))**

20 **Defendants Are Unlawfully Withholding and/or Delaying Action**

21 88. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth
22 herein.

23 89. The APA provides, among other things, that a court "shall compel agency action
24 unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

25 90. Defendants' refusal to solicit, accept, and process Plaintiff's non-competing
26 continuation grant funding application for each of the annual terms laid out in Plaintiff's five-
27

1 year grant award is agency action that has been withheld and/or unreasonably delayed in
 2 violation of, among other things, HHS's own regulations, the Consolidated Appropriations Act,
 3 and the APA.

4 91. Defendants' refusal to continue to process Plaintiff's grant funding for each year
 5 of the five-year term is agency action that has been withheld and/or unreasonably delayed and
 6 violation of this provision of the APA.
 7

8 **Count Three**
 9 **(Equitable Relief to Preserve Remedy)**

10 92. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth
 11 herein.

12 93. Defendants are poised to transfer or otherwise obligate funds at issue in this
 13 action.

14 94. Plaintiff is entitled to a full, fair, and meaningful process to adjudicate the
 15 unlawful termination of its grant.

16 95. Plaintiff will suffer irreparable injury if Defendants transfer, disburse, or
 17 otherwise obligate the funds that are the subject of this action before final resolution of this
 18 matter. *See City of Houston, Tex. v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1427 (D.C. Cir.
 19 1994).
 20

21 96. Accordingly, to ensure that Plaintiff has meaningful relief should it prevail in this
 22 action, the Court should enjoin Defendants from transferring or otherwise obligating the funds at
 23 issue.
 24

25 **VI. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays that this Court:

- 27 1. Declare Defendants' termination of the Plaintiff's grant unlawful;

2. Order Defendants to reinstate the terms of the Notice of Award, including, but not limited to, the five-year funding term;
3. Order Defendants to reinstate FY18 funding;
4. Order Defendants to solicit, accept, and process the County's application for FY19 funding;
5. Enjoin Defendants from disbursing, transferring, or otherwise obligating Plaintiff's grant funds for years four and five of its grant until this matter is adjudicated;
6. Award Plaintiff costs, attorneys' fees, and other disbursements for this action; and
7. Grant any other relief this Court deems appropriate.

Dated: February 15, 2018.

PACIFICA LAW GROUP LLP

By s/ Gregory J. Wong

Gregory J. Wong, WSBA #39329

Athanasios P. Papailiou, WSBA #47591

1191 2nd Avenue, Suite 2000

Seattle, WA 98101

(206) 245-1700

Greg.Wong@pacificallawgroup.com

Athan.Papailiou@pacificallawgroup.com

DEMOCRACY FORWARD

Javier M. Guzman, D.C. Bar #462679 (*Pro Hac Vice forthcoming*)

Josephine T. Morse, N.Y. Bar #4505673 (*Pro Hac Vice forthcoming*)

Skye L. Perryman, D.C. Bar #984573, TX Bar #24060411 (*Pro Hac Vice forthcoming*)

1333 H Street NW, Washington, DC 20005

(202) 448-9090

jguzman@democracyforward.org

jmorse@democracyforward.org

sperryman@democracyforward.org

Attorneys for Plaintiff King County